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COMMITTEE ON APPLICATIONS FOR REVIEW OF ADMINISTRATIVE TRIBUNAL JUDGEMENTS

VERBATIM RECORD OF THE 2nd MEETING

Held at Headquarters, New York,
on Wednesday, 20 January 1993, at 10.30 a.m.

Chairman: Mr. ZARIF (Islamic Republic of Iran)

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The meeting was called to order at 10.45 a.m.

The CHAIRMAN: The present public meeting of the Committee on Applications for Review of Administrative Tribunal Judgements has been convened pursuant to paragraph 4 of article VIII of the rules of procedure of the Committee contained in document A/AC.86/2/Rev.4. That paragraph provides as follows:

"The decisions of the Committee and the text of any questions to be addressed to the International Court of Justice, as well as the results of and the participants in any votes taken during the private deliberations, shall be formally announced in a public meeting, at which any member of the Committee may make a statement for the record."

At the current session, the Committee considered applications for review of the following Administrative Tribunal judgements:

First, the application of Ms. Claxton for a review of Administrative Tribunal Judgement No. 560;

Secondly, the application of Mr. Al-Atraqchi for a review of Administrative Tribunal Judgement No. 565;

Thirdly, application of Mr. Al-Jaff for a review of Administrative Tribunal Judgement No. 562;

Fourthly, application of Mr. Faruq for a review of Administrative Tribunal Judgement No. 558;

Lastly, application of Ms. Selamawit Makonnen for a review of Administrative Tribunal Judgement No. 555.

(The Chairman)

With regard to the application of Ms. Claxton, the Committee on Applications for Review of Administrative Tribunal Judgements considered the application of Ms. Claxton submitted with regard to Judgement No. 560 rendered by the United Nations Administrative Tribunal in the case of Claxton v. the Secretary-General of the United Nations, at its closed meeting held on 18 January 1993.

Having examined the application of Ms. Claxton, the Committee decided without a vote that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 560 delivered by the United Nations Administrative Tribunal in the case of Claxton v. the Secretary-General of the United Nations.

If no one wishes to speak at this stage, I shall take it that members would prefer to make their statements after I have read out all the decisions.

Let me now turn to the application of Mr. Al-Atraqchi. The Committee on Applications for Review of Administrative Tribunal Judgements considered the application of Mr. Al-Atraqchi submitted with regard to Judgement No. 565 rendered by the United Nations Administrative Tribunal in the case of Al-Atraqchi v. the Secretary-General of the United Nations at its closed meeting held on 18 January 1993.

Having examined the application of Mr. Al-Atraqchi, the Committee decided without a vote that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 565 delivered by the

(The Chairman)

United Nations Administrative Tribunal in the case of Al-Atraqchi v. the Secretary-General of the United Nations.

Turning to the application of Mr. Al-Jaff, the Committee on Applications for Review of Administrative Tribunal Judgements considered the application of Mr. Al-Jaff submitted with regard to Judgement No. 562 rendered by the United Nations Administrative Tribunal in the case of Al-Jaff v. the Secretary-General of the United Nations at its closed meeting held on 18 January 1993.

Having examined the application of Mr. Al-Jaff, the Committee decided without a vote that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 562 delivered by the United Nations Administrative Tribunal in the case of Al-Jaff v. the Secretary-General of the United Nations.

We turn now to the application of Mr. Faruq. The Committee on Applications for Review of Administrative Tribunal Judgements considered the application of Mr. Faruq submitted with regard to Judgement No. 558 rendered by the United Nations Administrative Tribunal in the case of Faruq v. the Secretary-General of the United Nations at its closed meeting held on 18 January 1993.

Having examined the application of Mr. Faruq, the Committee decided without a vote that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 558 delivered by the United Nations Administrative Tribunal in the case of Faruq v. the Secretary-General of the United Nations.

(The Chairman)

Turning now to the application of Ms. Makonnen, the Committee on Applications for Review of Administrative Tribunal Judgements considered the application of Ms. Selamawit Makonnen submitted with regard to Judgement No. 555 rendered by the United Nations Administrative Tribunal in the case of Selamawit Makonnen v. the Secretary-General of the United Nations at its closed meeting held on 18 January 1993.

Having examined the application of Ms. Makonnen, the Committee decided without a vote that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 555 delivered by the United Nations Administrative Tribunal in the case of Selmawit Makonnen against the Secretary-General of the United Nations.

I shall now call on those members of the Committee who wish to make a statement for the record.

Mr. WOOD (United Kingdom): I think it is very important for applicants and their advisers to understand that this Committee has a very specific mandate. This is set out in article 11 of the Statute of the Administrative Tribunal, as amended by the General Assembly in the 1950s.

Article 11 of the Statute provides that if a Member State, the Secretary-General or the person in respect of whom a judgement has been rendered by the Tribunal objects to the judgement on one or more of four grounds, a written application may be made to the Committee asking the Committee to request an advisory opinion of the International Court. The sole task of the Committee is to decide whether or not there is a substantial basis for the application on any of the four grounds referred to in the

(Mr. Wood, United Kingdom)

application. These grounds are, first, that the Tribunal has exceeded its jurisdictional competence; secondly, that the Tribunal has failed to exercise the jurisdiction vested in it; thirdly, that the Tribunal has erred on a question of law relating to the provisions of the Charter; and fourthly, that the Tribunal has committed a fundamental error in procedure, which has occasioned a failure of justice.

Important guidance on the scope of these grounds and on the quasi-judicial manner in which the Committee must carry out its task is to be found in the three opinions that the International Court has given, following requests from the Committee - the Fassler opinion in 1973, the Mortished opinion in 1982 and the Yakimetz opinion in 1987. These are, incidentally, the only requests that have been made by the Committee since its establishment in the mid-1950s.

It is not the function of the Committee to assess whether or not the Tribunal reached a correct decision on the facts or whether or not the Tribunal might have exercised its discretion in procedural matters in a different manner, for example, by holding oral proceedings.

(Mr. Wood, United Kingdom)

On the contrary, the Committee is strictly limited in its consideration of applications for review to the four grounds specified in article 11.

The meeting of the Committee on 18 January was very well attended with almost all the members present. At that meeting, the Committee, in accordance with its rules of procedure and its practice, considered the five applications on the basis of the documents before it, that is to say, the judgements of the Administrative Tribunal, the applications and the comments of the respondents on the applications. It considered each of these applications in accordance with its mandate, set out in article 11 of the Statute of the Tribunal, and concluded in each case that there was no substantial basis for the application.

Over the last year or two, views have been expressed in the General Assembly - and, indeed, in this Committee - concerning the future of the Committee; in particular, the question was discussed at the fifth meeting of the thirty-ninth session of the Committee. That discussion is set out in the verbatim record of that meeting. In the opinion of my delegation, the future of this Committee is indeed a matter that should be considered in an appropriate main committee of the General Assembly - and in my view, that means the Sixth, Legal, Committee - at the earliest possible date, I would hope in the autumn of this year.

Mr. ABOULMAGD (Egypt) (interpretation from Arabic): I should like first of all to express my country's satisfaction at seeing you, Sir, assuming the chairmanship of this Committee, and to express also our confidence in your competence, which we noted while working under your stewardship of the deliberations and debates in the Sixth Committee at the last session of the General Assembly.

(Mr. Aboulmagd, Egypt)

Allow me to begin my comments by saying that my participation in the decisions taken by this Committee regarding the five cases before it came after lengthy reflection and in-depth consideration of all the decisions of the Administrative Tribunal. We reached those decisions after noting that none of the pleas for review were valid. It should not be inferred, however, that we concur with every aspect of the Tribunal's decisions, or that we are fully satisfied that justice was done. The only conclusion that can be drawn from the fact that there was no referral to the International Court of Justice is that we were convinced, as we said, that these applications were not in accordance with article 11.

In that respect, we agree with the criticisms of article 11 advanced by other delegations in previous years. We also have expressed our reservations regarding this article and its restricted scope.

We have clearly noted in our contacts with many delegations within this Committee, and in studying all these documents, that the great majority of delegations share our view regarding the need for a genuine improvement in the Committee's working methods. Moreover, the United Nations staff directly affected by the Committee's work are not satisfied by the limited domain within which this Committee operates. Also, the International Court of Justice is showing that it is not satisfied with the cases the Committee refers to it.

Should the Committee continue to operate in this manner despite this dissatisfaction amongst all those concerned? Of course not. That is why we need to carry out a thorough review of the appeals procedure within the United Nations and of the link between the Administrative Tribunal and the United Nations. That is to say that any review of the way the Committee operates

(Mr. Aboulmagd, Egypt)

ought not to be carried out without regard to the general system for submitting appeals.

Although my delegation is fully aware of the fact that the question of how this Committee should function should be debated in the General Assembly, as that is the appropriate forum, we felt it necessary to make these comments here today so that our position would be clear. We are willing to give objective, impartial consideration to all proposals that are submitted so that we can ensure greater justice that is more likely to protect the rights of both staff and Administration.

We hope that this matter will receive the attention it needs during the next session of the General Assembly.

Mr. HAYES (Ireland): Speaking frankly, I believe that this review procedure in which we have been involved serves very little purpose. That is a fairly strong thing to say, but I really believe it. The main reason I say so is that the basis of the review, the four grounds set out in article 11, to which the representative of the United Kingdom has drawn our attention again this morning, is too narrow.

I have not studied the statistics, but am again indebted to the representative of the United Kingdom for indicating to us this morning that over the years of this review body only three applications for reference to the International Court of Justice have been granted. There might be nothing wrong in this; the statistics do not necessarily prove that there is. This would certainly not be wrong if we could be sure that this result came about because none of the other applicants had genuine reason to be dissatisfied with decisions taken in their regard either by the Secretariat or by the Administrative Tribunal.

(Mr. Hayes, Ireland)

However, in my own short experience in this review group - last year and this year - I have been aware of cases where I had feelings of unease as to whether justice had been seen to be done, at the very least. These were all cases in which I concluded that none of the four grounds set out in article 11 could be established. In mentioning the matter of whether justice had been seen to be done, I mean that - certainly in my legal system, and I think in most legal systems, and perhaps in all - the fact that justice is seen to be done is regarded as an essential element in the doing of justice, and it is certainly something to which my delegation would attach great importance.

Accordingly, I believe that the General Assembly should examine this review procedure radically to decide whether - as I believe - it should be fundamentally revised. This is a task, of course, for the General Assembly, and again I agree with the representative of the United Kingdom that it should be done in a main Committee, and that the most obvious of the main Committees is the Sixth Committee. It is therefore, of course, not for this body to make that examination.

Nevertheless, I hope you will indulge me for a few minutes while I make a few remarks about the main things that I believe need to be looked at, and I think these come mainly under two headings.

(Mr. Hayes, Ireland)

The first is the nature of the review that should be provided for, and that includes the action that should be open to the review body and the grounds on which it should be enabled to take such action.

The second heading would be the way in which the review body is established so that it is fit to undertake such a review.

I have already said that I believe that the grounds for the review under the current provisions are too narrow. May I add - without being insulting to anybody, I hope - that the way in which this body is established is not such as to ensure that it is qualified to exercise a quasi-judicial function, and it seems to me that the function it is exercising at the moment and that which it would exercise on the basis of any different kind of review would necessarily be at least a quasi-judicial function. I also personally have doubts whether it is appropriate to involve the International Court in this kind of review procedure.

Let me say again that I agree with those who say that this is a matter which should be examined by the General Assembly. The questions that have been raised are not new. They were raised last year - when I was also a member of the review body - at which time it was intended to undertake informal consultations. For reasons that are clear to everybody and for which nobody is at fault, those consultations were not undertaken, but I certainly hope that steps will be taken to ensure that the matter is considered by the General Assembly at its next session.

Mr. KALPAGE (Sri Lanka): The Sri Lankan delegation is in agreement with the decisions of the Committee on all the cases that were placed before it for consideration. However, even after listening to our colleague from the United Kingdom, who spoke of the specific mandate that the Committee has under

(Mr. Kalpagé, Sri Lanka)

article 11 of the Statute of the Administrative Tribunal, I should like to make a statement on a matter of importance that has been raised by the applicant in the case of Claxton v. the Secretary-General of the United Nations. It is, I think, a matter of great importance to the Organization.

The Administrative Tribunal found no connection between the alleged sexual harassment and the decisions concerning either the classification of the applicant's post at the G-7 level, the finding that her appeal against the classification was time-barred, or the outcome of the inconsistency review. Nevertheless, the Administrative Tribunal addressed the question of sexual harassment in a number of paragraphs in its judgement of 30 June 1992, and arrived at the strong conclusion that it is essential that

> "a full investigation ... be conducted with respect to the extremely disturbing allegations made by the applicant and others" (AT/DEC/560, p. 12, para. V).

The comments made in the name of the Secretary-General on the application submitted to the Committee by the applicant inform the Committee in paragraph 13 that on 21 October 1992 the Secretary-General appointed a Justice of the High Court of Ireland, who is also a member of the International Labour Organisation's Administrative Tribunal, to conduct an inquiry into the allegations of sexual harassment in the present case once the judgement of the Tribunal becomes final and to report on the inquiry to the Secretary-General. The observations expressed by the Administrative Tribunal in its judgement on the allegations of sexual harassment made in the present case and the action taken by the Secretary-General pursuant to the observations of the Tribunal are matters with which the delegation of Sri Lanka would like to express its concurrence.

(Mr. Kalpagé, Sri Lanka)

I have also listened very carefully to the comments made by our colleagues from Egypt and Ireland, and I find myself in agreement with what they have said: that there is a need for improvement in the working methods of the Committee, and that the review proceedings - as the Committee is currently constituted and in terms of the mandate it has been given - serve very little purpose. The General Assembly should therefore examine this review procedure to see whether it should be revised.

Mr. MIRZAEE-YENGEJEH (Islamic Republic of Iran): My delegation was in agreement with all decisions of the fortieth session of the Committee on Applications for Review of Administrative Tribunal Judgements, which you, Sir, announced a few moments ago. However, I wish to make the following points, to be reflected in the record of the proceedings of the Committee.

We noted in paragraphs V and VI of Judgement No. 560 that the Administrative Tribunal had not entered into the question whether the alleged sexual harassment in the Claxton case had occurred, and that the Tribunal has found no connection between the allegations of sexual harassment and issues related to the reclassification of the applicant's post.

Nevertheless, we would like to reiterate that the allegations of sexual harassment in the Claxton case represent a sensitive and serious question, and that it is important for the Organization to pursue the matter until justice is served. We are happy to note in this respect that the Secretary-General has appointed an independent judge to carry out an investigation and report to him on necessary action.

Finally, as to comments made regarding the review of the role of the Review Committee, I should like to express our readiness to cooperate and to participate in any idea or any proposal in that connection.

Ms. MILLSON (United States of America): The comments of previous speakers have focused our attention on the mandate of the Committee and in particular on its limitations. Owing to the limited mandate, it has been necessary, in considering these cases, to bear in mind that the Committee is a Committee on the Review of Administrative Judgements and not on the appeal of Administrative Judgements. That is the essential difference and is perhaps the basis of the misunderstanding that has so frequently clouded our work.

Other representatives speaking today have referred to a particular case. In commenting on that case, which included allegations of sexual harassment, the Administrative Tribunal concluded that the allegations did not have a bearing on the case. Nevertheless, the Tribunal referred to the special importance of the subject of sexual harassment, which it characterized as a form of prohibited, gender-based discrimination.

Sexual harassment in the workplace has been proscribed by New York City, State and United States law. My Government regards it as a serious matter and supports the Secretary-General's view, expressed in Bulletin ST/SGB/253 of 29 October 1992, that sexual harassment is contrary to the Charter and consequently to the policy of the Organization.

(Ms. Willson, United States)

We note that, concurrent with the issuance of that bulletin, "Guidelines for promoting equal treatment for men and women in the Secretariat" (ST/IC/1992/67) and "Procedures for dealing with sexual harassment" (ST/AI/379) were issued by the Under-Secretary-General for Administration and Management. These are all positive steps in heightening awareness of the problem and in dealing with it.

With reference to the procedure followed at this meeting, my delegation notes that the provision of verbatim records is at variance with Article XII, paragraph 2, of the rules of procedure, as amended on 30 July 1991.

The rules were waived in this instance at the request of some members of the Committee who wanted their statements today to be recorded verbatim.

In our view, this departure from the rules is precisely that and should not be regarded as having any precedential value.

The CHAIRMAN: If no other member of the Committee wishes to make a statement, I should like to mention informally that the concern raised by members of the Committee and by others regarding the mandate and role of the review body has been with us for some time. It was suggested last year that consultations on this issue be held outside the framework of the Committee. Unfortunately, for reasons beyond anybody's control, that did not materialize.

We would probably like to do the same this year. I have had consultations with some members of the Committee and it has been suggested that, outside the framework of the Committee, Ambassador Hayes of Ireland would conduct informal consultations with all interested delegations in the hope that some suggestions could be found to be presented to a main body of the General Assembly, probably the Sixth Committee. I believe that this would be a good mechanism with which to start the process and I wish to express my

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appreciation to Ambassador Hayes for having agreed to coordinate the consultations.

There being no more speakers, that concludes the work of the Committee on Applications for Review of Administrative Tribunal Judgements, at its fortieth session.

The meeting rose at 11.25 a.m.